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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,950	10/21/2004	Hans Joachim Bruins	B1180/20030	8787
3000	7590	12/01/2006	EXAMINER GEISEL, KARA E	
CAESAR, RIVISE, BERNSTEIN, COHEN & POKOTILOW, LTD. 11TH FLOOR, SEVEN PENN CENTER 1635 MARKET STREET PHILADELPHIA, PA 19103-2212			ART UNIT 2877	

DATE MAILED: 12/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/511,950

Applicant(s)

BRUINS, HANS JOACHIM

Examiner

Kara E. Geisel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11-15 is/are rejected.
- 7) ☒ Claim(s) 10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 October 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 0605.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

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## **DETAILED ACTION**

### ***Preliminary Amendment***

The preliminary amendment filed on October 21<sup>st</sup>, 2004, has been entered into this application.

### ***Priority***

Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d).

The certified copy has been filed in this application on April 24<sup>th</sup>, 2005.

### ***Information Disclosure Statement***

The information disclosure statement filed June 20<sup>th</sup>, 2005, has been considered by the examiner.

### ***Specification***

The disclosure is objected to because of the following informalities: specific claims are referenced throughout the specification.

Appropriate correction is required.

### ***Claim Rejections***

Claims 9-10 are objected to for the following reasons: inconsistent wording.

In regards to claims 9-10, the preamble discloses a measuring **device**, which is inconsistent with the preamble of claim 1, a measuring **arrangement**, from which these two claims depend.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-9 and 11-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Aldridge (USPN 5,946,088).

In regards to claim 1, Aldridge discloses a measuring arrangement for spectroscopic measurements (figs. 1-2) on a particulate or a liquid sample (column 3, lines 60-61), comprising a measuring cuvette for accommodating a sample (101), having at least one window (137) through which a sample can be exposed to radiation (column 5, lines 40-45), and comprising two shells adapted to form a container for the sample when assembled together (101 and 115), and a rotating mount with which the measuring cuvette can be rotated about a predetermined axis of rotation (column 4, lines 23-53) wherein an alignment of the axis of rotation deviates from a vertical reference direction (rotates along line from 111 to 125).

In regards to claim 2, the axis of rotation is aligned horizontally (rotates along line from 111 to 125).

In regards to claim 3, the measuring cuvette has a coupling device (111, 125), which cooperates with a driving device of the rotating mount (216).

In regards to claim 4, the coupling device has a coupling surface or a groove for a belt drive (219 and column 4, lines 49-51).

In regards to claim 5, the two shells (101 and 115) are held together by a ring frame (208).

In regards to claim 6, the two shells have different volumes (101 and 115).

In regards to claim 7, the measuring cuvette contains mechanical mixing elements (the elements are the first arm and second arm of the v shape, which assist in mixing the sample).

In regards to claim 8, the measuring cuvette has an opening for sample charging and removal (119 and column 4, lines 17-22).

In regards to claim 9, Aldridge discloses a measuring device (figs. 1-2) for spectroscopic measurement on particulate samples comprising a measuring arrangement as disclosed above, and a spectrometer (column 5, lines 35-40).

In regards to claim 11, Aldridge discloses a method for spectroscopic measurement on a particulate or liquid sample (figs. 1-2, column 5, lines 45-65) comprising arranging the sample in a measuring cuvette (column 4, lines 11-22) which can be rotated with a rotating mount (column 4, lines 23-53), and performing at least two spectroscopic measurements, wherein between the measurements, the measuring cuvette is rotated about an axis of rotation which deviates from a vertical reference direction (column 9, lines 1-11; rotates along line from 111 to 125).

In regards to claim 12, the measuring cuvette is rotated about a horizontal axis of rotation between two measurements (rotates along line from 111 to 125).

In regards to claim 13, the method further comprises the step of spectroscopic analysis of particulate, free-flowing or suspended or liquid samples (column 5, line 45 – column 6, line 2).

In regards to claims 14-15, the method is generally directed towards a method of mixing and measuring a liquid or particulate sample (column 5, lines 45-65), which could be any sample desired to be mixed, including cereal grains or suspensions.

***Allowable Subject Matter***

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Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

As to claim 10, the prior art of record, taken alone or in combination, fails to disclose or render obvious a measuring arrangement for spectroscopic measurements on a particulate or liquid sample comprising having an actuator unit with which the measuring cuvette can be moved from a loading position into a calibration position or a measurement position, in combination with the rest of the limitations of claim 10.

*Additional Prior Art*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art made of record is Nebe et al. (USPN 5,347,358), LaChapelle et al. (USPN 5,568,262), and Virág (USPN 6,249,344).

Nebe and LaChapelle disclose a measuring arrangement for measurements on a particulate or a liquid sample, comprising a measuring cuvette for accommodating a sample, having at least one window through which a sample can be exposed to radiation, and comprising two shells adapted to form a container for the sample when assembled together, and a rotating mount with which the measuring cuvette can be rotated about a predetermined axis of rotation wherein an alignment of the axis of rotation deviates from a vertical reference direction.

Virág discloses a measuring arrangement for measurements on a particulate or a liquid sample, comprising a measuring cuvette for accommodating a sample, having at least one window through which a sample can be exposed to radiation, and a rotating mount with which

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the measuring cuvette can be rotated about a predetermined axis of rotation wherein an alignment of the axis of rotation deviates from a vertical reference direction.

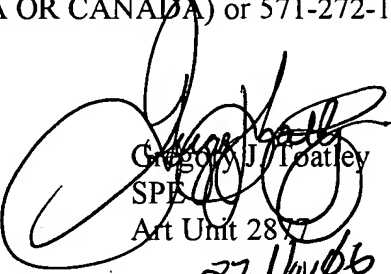
*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kara E Geisel whose telephone number is **571 272 2416**. The examiner can normally be reached on Monday through Friday, 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J. Toatley, Jr. can be reached on **571 272 2800 ext. 77**. The fax phone number for the organization where this application or proceeding is assigned is **571 273 8300**.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Gregory J. Toatley  
SPE  
Art Unit 2877  
27 Nov 06

K.G.  
KEG  
November 22, 2006